

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LARRY McNAIR,

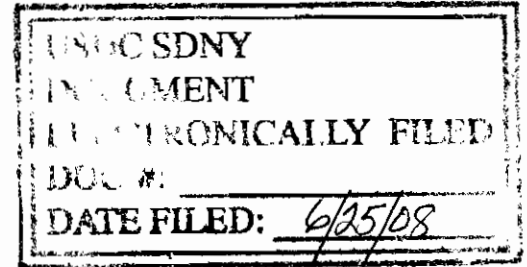
Plaintiff,

08 Civ. 3439 (GBD) (DFE)

- against-

MEMORANDUM AND ORDER

POLICE COMMISSIONER RAYMOND KELLY,
DET. SANTIAGO,
DET. DAVID LEVINE,
DET. BRADLEY, #2379,
DET. VALENTIN, #4489,
E.S.U. DET. KESTHELFI,
E.S.U. DET. JOHN DOE #1, and
E.S.U. DET. JOHN DOE #2,



Defendants,
-----x

DOUGLAS F. EATON, United States Magistrate Judge.

1. District Judge George B. Daniels has referred this case to me for general pre-trial supervision. I have reviewed the Court records, including a May 30, 2008 letter from Brian Francolla, Esq. of the New York City Law Department. The complaint was filed on April 8, 2008, and there is no proof that the summons and complaint have been served upon any of the defendants. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint [i.e., by August 6, 2008], the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period ...

2. I direct Mr. McNair to complete all action needed for formal service of the summons and complaint upon each defendant whose name he knows. For this purpose, plaintiff must fill out the forms provided by this Court's Pro Se Office and forward them to the U.S. Marshal. If plaintiff needs more forms, he should

USDC SDNY
DATE SCANNED 6/25/08 *[signature]*

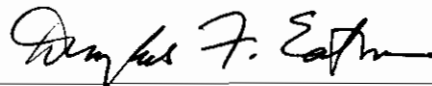
request them from the Pro Se Office.

3. If Mr. McNair does not, by August 6, 2008, send to me proof of service or good reasons for failure to make service, then I will recommend that the District Judge dismiss this lawsuit as to any unserved defendant.

4. Mr. Francolla's letter, at page 2, says that he is sending to Mr. McNair forms for the release of records that were sealed in connection with his November 14 and 23, 2007 arrests and subsequent prosecutions. I direct Mr. McNair to (a) sign those forms in front of a notary public, and (b) return them promptly to Mr. Francolla. This is necessary for two reasons. First, to give Mr. Francolla a fair opportunity to prepare for a lawsuit that he will probably be asked to defend. Second, these records may be the only way for Mr. McNair to learn the true names of the "John Doe" defendants.

5. On each occasion when Mr. McNair sends me a document, he must enclose a certification that he mailed a copy to Mr. Francolla. Mr. McNair is required to give prompt written notice to Mr. Francolla, and to the Pro Se Office, and to my chambers, about any change of address. Failure to do^{so} may result in a dismissal of the lawsuit.

6. The address of the Pro Se Office is Room 230, United States Courthouse, 500 Pearl Street, New York, N.Y. 10007, and their telephone number is (212) 805-0175. They can provide assistance in connection with the Court's procedures, but they cannot give legal advice.



DOUGLAS F. EATON
United States Magistrate Judge
500 Pearl Street, Room 1360
New York, New York 10007
Telephone: (212) 805-6175
Fax: (212) 805-6181

Dated: New York, New York
June 24, 2008

Copies of this Memorandum and Order were sent on this date by mail to:

Larry McNair
(#349-07-21674)
George R. Vierno Center
09-09 Hazen Street
East Elmhurst, NY 11370

Brian Francolla, Esq.
Assistant Corporation Counsel
Special Federal Litigation Division
New York City Law Department
100 Church Street
New York, NY 10007

Pro Se Office
Room 230, U.S. Courthouse
500 Pearl Street
New York, NY 10007

Hon. George B. Daniels